

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1371-JJF
)	
FAIRCHILD SEMICONDUCTOR)	
INTERNATIONAL, INC., and FAIRCHILD)	
SEMICONDUCTOR CORPORATION,)	
)	
Defendants.)	

**DEFENDANTS' ANSWERING BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PREJUDGMENT INTEREST**

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I. INTRODUCTION.

While the amount sought by Power Integrations is incorrect, Fairchild does not dispute that Power Integrations is entitled to prejudgment interest.¹ The Court, however, should not award prejudgment interest for the delay caused by Power Integrations' untimely production of documents.

The invalidity trial was scheduled to begin on June 4, 2007. Barely two weeks before trial could start, Power Integrations produced 266 pages of documents. The Court determined that Power Integrations' tardy production required a continuation and that "any delay in the upcoming trial is chargeable to the lapse in performance by Power Integrations." D.I. 483. Trial actually began on September 17, 2007 – over three months later. Power Integrations is not entitled to prejudgment interest for the over three month delay caused by its own failure to produce documents.

II. UNDISPUTED POINTS.

While Fairchild does not dispute that Power Integrations is entitled to prejudgment interest, the amount of interest cannot be determined until the Court resolves Fairchild's pending post-trial motions. The methodology suggested by Power Integrations, however, is generally appropriate.

Specifically, Fairchild agrees with Power Integrations on the following points raised in Power Integrations' Motion for Pre-Judgment Interest and the supporting Declaration of Richard B. Troxel Regarding Prejudgment Interest (D.I. 607 and D.I. 608, respectively):

- The prejudgment interest rate should be equal to the one-year constant maturity Treasury yield.² D.I. 607, p. 4.
- Prejudgment interest should not be awarded prior to the filing of the Complaint. D.I. 607, p. 4.
- Prejudgment interest should not be awarded for "future" damages. D.I. 607, p. 4.
- Any prejudgment interest on damages for lost profits from lost sales and price erosion should be calculated using Mr. Troxel's "mid-month" assumption whereby one-half of the

¹ Power Integrations' prejudgment interest is calculated based on the jury's award of "worldwide" damages. As set forth in Fairchild's pending post-trial motion, as a matter of law Fairchild is not liable for "worldwide" damages for infringement of a United States patent. *See* D.I. 613. Thus, these damages must be reduced, which will necessarily reduce the amount of prejudgment interest to which Power Integrations is entitled.

² Mr. Troxel made a typographical error and listed the one-year constant maturity Treasury yield for November and December, 2007 as 4.1%. *See* D.I. 608 (Exh. 4 to Exh. of Troxel Decl.). Mr. Troxel purported to source this information from http://www.federalreserve.gov/releases/H15/data/Monthly/H15_TCMNOM_Y1.txt. As set forth in Exhibit 1, however, the actual rate for November, 2007 was 3.5%, not 4.1%.

damages for a particular month are deemed received in that month. D.I. 608, Exh. A, p. 89.

- Any prejudgment interest on damages due to a reasonable royalty should be calculated on the assumption that royalty payments would be made 30 days after the end of the quarter in which they accrued. D.I. 608, Exh. A, p. 90.
- Prejudgment interest should be calculated on an after-tax basis. D.I. 608, Exh. A, p. 90.

Thus, while the parties disagree on the amount of prejudgment interest, the parties agree on the methodology used to calculate such interest, if appropriate. The only real dispute is whether Fairchild should be charged interest for the over three month delay caused by Power Integrations' failure to produce documents.

III. ARGUMENT.

While prejudgment interest is ordinarily awarded (35 U.S.C. § 284), the Supreme Court has held that courts have discretion to limit such awards where there is "some justification" for doing so. *See General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 656-57 (1983). For instance, where the patent owner has been responsible for undue delay in prosecuting the lawsuit, "it may be appropriate to limit prejudgment interest, or perhaps even deny it altogether." *Id.* This is consistent with the purpose of such awards, which is "not punitive" (*Oiness v. Walgreens Co.*, 88 F.3d 1025, 1003 (Fed. Cir. 1996)) but, rather, to "make the patent owner whole." *General Motors*, 461 U.S. at 648.

The Court already determined that Power Integrations' delay in producing documents required a three month continuation in the date of the invalidity trial. *See* D.I. 483. Trial had been set for June 4, 2007. D.I. 452. On May 14, 2007, Power Integrations produced an additional 266 pages of documents collected from Dr. Eklund responsive to Fairchild's document requests. This late production of documents required Fairchild to redepose Dr. Eklund and, thus, necessitated continuing the invalidity trial. The Court granted this continuance and properly noted that it was Power Integrations' fault:

Because this request arises from the production of documents that Power Integrations was required to produce long ago, **I find that any delay in the upcoming trial is chargeable to the lapse in performance by Power Integrations.**

D.I. 483, p. 1 (emphasis added).

Fairchild should not be required to pay interest for the delay “chargeable” to Power Integrations. To hold otherwise would penalize Fairchild for Power Integrations’ misconduct and perversely encourage plaintiffs to delay their own litigation.

IV. CONCLUSION

If, after resolving Fairchild’s post-trial motions, prejudgment interest is appropriate, it should be calculated in the manner agreed to by the parties but should exclude the delay from June 4 through September 17, 2007 caused by Power Integrations’ failure to produce documents.

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186863.1

EXHIBIT A

,Instrument,"U.S. government securities/Treasury constant maturities/Nominal"
,Maturity,"1-year"
,Frequency,"Monthly"
,Description,"Market yield on U.S. Treasury securities at 1-year constant maturity"
,Note,"Yields on actively traded non-inflation-indexed issues adjusted to constant

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